

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF PUERTO RICO

3 FELICITA GONZALEZ, *as legal guardian*  
4 *for Jesus A. Fernández-Gonzalez,*  
5 VERONICA Fernández-ROSARIO,  
ESTATE OF JESUS Fernández-Hernández

6 Plaintiffs

7 v.

8 PEDRO TOLEDO, BENJAMIN  
9 RODRIGUEZ-TORRES, EDWIN  
RIVERA-MERCED, CARMELO  
RAMOS-SOTO, GRISELLE RIVERA-  
AYALA, INSURANCE COMPANIES A-Z

10 Defendants

11 Civil No. 08-1869 (SEC)

12 **OPINION and ORDER**

13 Pending before this Court is Pedro A Toledo-Davila (“Toledo”), Benjamin Rodriguez-  
14 Torres (“Rodriguez-Torres”), and Edwin Rivera-Merced’s (“Rivera-Merced”) (collectively  
15 “Defendants”) motion to dismiss (Docket # 15). Felicita Gonzalez, as legal guardian for Jesus  
16 A. Fernández-Gonzalez, and Veronica Fernández-Rosario, individually and as representative  
17 of the Estate of Jesus Fernández-Hernández (collectively “Plaintiffs”) opposed (Docket # 20),  
18 and Defendants replied (Docket # 21). After reviewing the filings, and the applicable law,  
19 Defendant’s motion to dismiss is **GRANTED**.

20 **Factual Background**

21 On August 8, 2008, Plaintiffs filed the instant complaint under Sections 1981, 1983, and  
22 1988 of the Civil Rights Act of 1964, 42 U.S.C. §§ 1983, 1983 & 1988, the Fourth, Fifth,  
23 Seventh, Eighth, and Fourteenth Amendments of the U.S. Constitution, Article II of the  
24 Commonwealth’s Constitution, and Article 1802 of the Puerto Rico Civil Code, P.R. Laws Ann.  
tit. 31 § 5141, against Toledo, Rodriguez-Torres, Rivera-Merced, various police officers, and  
25 other unnamed defendants, in their personal capacity. According to the complaint, pursuant to  
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3 Inspector Orlando Meléndez’s (“Meléndez”) orders, Lt. Agustin Mendez-Rodriguez was  
4 assigned to cover Lt. Victor Camacho-Rivera’s shift while the latter was on vacation. Docket  
5 # 3, at 15. However, Rivera-Merced modified Meléndez’s orders, and instead assigned Jesus  
6 Fernández-Hernández (“Fernández-Hernández”) to temporarily replace Camacho-Rivera at the  
7 Yabucoa Police Station, despite knowing that Sgt. Carmelo Ramos-Soto (“Ramos-Soto”) also  
8 worked there, and that there was “bad blood” between Ramos-Soto and Fernández-Hernández.  
9 Id. at 16. On September 12, 2007, Ramos-Soto shot and killed fellow police officer Fernández-  
10 Hernández. Plaintiffs allege that Defendants failed to adequately supervise Ramos-Soto. They  
11 further argue that Defendants knew, or should have known, about the long-standing history of  
12 fights, disputes, and the “hateful” relationship between Fernández-Hernández and Ramos-Soto,  
13 and therefore, they should not have been assigned to work together. Docket # 3, p. 5.

14 On September 16, 2008, Plaintiffs filed a motion requesting default be entered against  
15 all defendants. Docket # 6. Shortly thereafter, all defendants, except Ramos-Soto, filed their  
16 responsive pleadings. See Dockets ## 10 & 13. On October 8, 2009, Defendants filed a motion  
17 to dismiss.<sup>1</sup> Docket # 15. Plaintiffs request that said motion be stricken, and that default be  
18 entered. Docket # 18. Plaintiffs’ also filed an opposition to Defendants’ motion to dismiss  
19 (Docket # 20), and Defendants replied (Dockets ## 21 & 22). On December 15, 2008,  
20 Defendants filed a second motion to dismiss requesting that all claims against Insurance  
21 Companies A-Z be dismissed for failure to comply with FED. R. CIV. P. 4(m). Docket # 25.  
22 Finally, on May 29, 2009, Defendant Griselle Ayala-Rivera (“Ayala-Rivera”) filed a third party  
23 complaint against Camacho-Rivera, Meléndez, and Luis Aponte. Docket # 30. She also filed  
24 a cross-claim against Defendants. Docket # 31.

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26 <sup>1</sup> They filed an amended motion to dismiss the following day. Docket # 16.

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3 **Standard of Review**4 *Fed. R. Civ. P. 12(b)(6)*

5 To survive a Rule 12(b)(6) motion, Plaintiffs' "well-pleaded facts must possess enough  
 6 heft to show that [they are] entitled to relief." Clark v. Boscher, 514 F. 3d 107, 112 (1<sup>st</sup> Cir.  
 7 2008).<sup>2</sup> In evaluating whether Plaintiffs are entitled to relief, the court must accept as true all  
 8 of their "well-pleaded facts [and indulge] all reasonable inferences therefrom" in the plaintiff's  
 9 favor. Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964 (2007). The First Circuit has held  
 10 that "dismissal for failure to state a claim is appropriate if the complaint fails to set forth factual  
 11 allegations, either direct or inferential, respecting each material element necessary to sustain  
 12 recovery under some actionable legal theory." Gagliardi v. Sullivan, 513 F. 3d 301, 305 (1<sup>st</sup> Cir.  
 13 2008). Courts "may augment the facts in the complaint by reference to documents annexed to  
 14 the complaint or fairly incorporated into it, and matters susceptible to judicial notice." Id. at  
 15 305-306. However, in judging the sufficiency of a complaint, courts must "differentiate between  
 16 well-pleaded facts, on the one hand, and 'bald assertions, unsupportable conclusions,  
 17 periphrastic circumlocution, and the like,' on the other hand; the former must be credited, but  
 18 the latter can safely be ignored." LaChapelle v. Berkshire Life Ins., 142 F.3d 507, 508 (citing  
 19 Aulson v. Blanchard, 83 F.3d 1, 3 (1<sup>st</sup> Cir.1996)); Buck v. American Airlines, Inc., 476 F. 3d  
 20 29, 33 (1<sup>st</sup> Cir. 2007); see also Rogan v. Menino, 175 F.3d 75, 77 (1<sup>st</sup> Cir. 1999). Thus Plaintiffs  
 21 must rely in more than unsupported conclusions or interpretations of law, as these will be  
 22 rejected. Berner v. Delahanty, 129 F.3d 20, 25 (1<sup>st</sup> Cir. 1997) (citing Gooley v. Mobil Oil Corp.,  
 23 851 F.2d 513, 515 (1<sup>st</sup> Cir. 1988)).

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25 <sup>2</sup> FED. R. CIV. P. 8(a)(2) requires only "a short and plain statement of the claim showing that  
 26 the pleader is entitled to relief," in order to allow the defendant fair notice of what the claim is and the  
 grounds upon which it rests. Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964 (2007).

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3 Therefore, “even under the liberal pleading standards of Federal Rule of Civil Procedure  
4 8, the Supreme Court has recently held that to survive a motion to dismiss, a complaint must  
5 allege ‘a plausible entitlement to relief.’” Rodríguez-Ortíz v. Margo Caribe, Inc., 490 F.3d 92  
6 (1<sup>st</sup> Cir. 2007) (citing Twombly, 127 S. Ct. at 1965). Although complaints do not need detailed  
7 factual allegations, the “plausibility standard is not akin to a ‘probability requirement,’ but it  
8 asks for more than a sheer possibility that a defendant has acted unlawfully.” Twombly, 127  
9 S. Ct. at 1965; see also Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). A plaintiff’s obligation  
10 to “provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and  
11 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”  
12 Twombly, 127 S. Ct. at 1965. That is, “factual allegations must be enough to raise a right to  
13 relief above the speculative level, on the assumption that all allegations in the complaint are  
14 true.” Parker v. Hurley, 514 F. 3d 87, 95 (1<sup>st</sup> Cir. 2008).

15 **Applicable Law and Analysis**

16 *Plaintiff’s Section 1983 Claims*

17 Defendants argue that Plaintiffs fail to state a Section 1983 claim, and that the Section  
18 1983 claims against those Defendants who are supervisors should be dismissed because there  
19 is no *respondeat superior* liability under said statute. Plaintiffs oppose dismissal on both fronts,  
20 arguing that they have included averments within their complaint sufficient to survive dismissal  
21 at this stage. This Court begins its discussion by addressing the familiar Section 1983 standard.

22 A claim under Section 1983 is established by demonstrating two elements: (1) that a  
23 government official, acting under the color of state law, (2) has caused the deprivation of a  
24 federal right. Burke v. Town of Walpole, 405 F.3d 66, 76 (1st Cir. 2005) (citing Kentucky v.  
25 Graham, 473 U.S. 159, 166 (1985)). Furthermore, a plaintiff in a civil rights action must allege  
26 an injury to a cognizable interest, and that this injury is “...causally related to the challenged

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2 conduct,” and can be redressed through the litigation in question. See Pagan v. Calderon, 448  
 3 F.3d 16, 27 (1<sup>st</sup> Cir. 2006). The conduct alleged to have caused the violation must also be  
 4 intentional or recklessly indifferent to the plaintiff’s federal statutory or constitutional right. Del  
 5 Villar-Rosario v. P.R. DOJ, No. 06-2089, 2008 U.S. Dist. LEXIS 36059,\*5 (D.P.R. Mar. 3,  
 6 2008); see also Gutierrez Rodriguez v. Cartagena, 882 F.2d 553, 559 (1<sup>st</sup> Cir. 1989).

7 The First Circuit has held that “[i]n an action brought under §1983, supervisors are not  
 8 automatically liable for the misconduct of those under their command.” Carmona v. Toledo,  
 9 215 F.3d 124, 132 (1<sup>st</sup> Cir. 2000). However, a supervisor’s liability “can be grounded on either  
 10 the supervisor’s direct participation in the unconstitutional conduct, or through conduct that  
 11 amounts to condonation or tacit authorization.” Whitfield v. Meléndez-Rivera, 431 F.3d 1, 14  
 12 (1<sup>st</sup> Cir. 2005) (citing Camilo Robles v. Zapata, 175 F.3d 41, 44 (1<sup>st</sup> Cir. 1999)). Unless the  
 13 supervisor directly participated in the deprivation of the plaintiff’s constitutional rights, he may  
 14 only be held liable if: “(1) the behavior of his subordinates results in a constitutional violation  
 15 and (2) the supervisor’s action or inaction was affirmatively linked to the behavior in the sense  
 16 that it could be characterized as supervisory encouragement, condonation or acquiescence or  
 17 gross negligence amounting to deliberate indifference.” Id. (quoting Hegarty v. Somerset  
 18 County, 53 F.3d 1367, 1379-1380 (1<sup>st</sup> Cir. 1995)).<sup>3</sup>

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 21       <sup>3</sup> Failure to train claims may, in appropriate circumstances, lead to an imposition of liability on a  
 22 supervisor or a municipality. See Calvi v. Knox County, 470 F.3d 422, 429 (1<sup>st</sup> Cir. 2006) (liability will attach  
 23 if “the municipality fails to provide adequate training notwithstanding an obvious likelihood that inadequate  
 24 training will result in the violation of constitutional rights”) (citing Whitfield, 431 F.3d at 10). However, an  
 25 assertion that a supervisor “failed to train” his subordinates and that he should be held liable for such failure,  
 26 without identifying the factual underpinnings of such failure, nor identifying the causal nexus between the failed  
 training and the street-level misconduct, is not enough. See Rodríguez-Vázquez v. Cintrón-Rodríguez, 160 F.  
 Supp. 2d 204 (D.P.R. 2001) (dismissing claims against Police Superintendent; broad and general allegations of  
 inadequate training and supervision of the police force that are not linked to the particular defendants joined in  
 the action insufficient to state a claim against the superintendent); Rodríguez-Esteras v Diaz, 266 F. Supp. 2d  
 270 (D.P.R. 2003) (dismissing failure to train claim against police superintendent for failure to plead minimum  
 facts in support of such a claim).

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3 Defendants aver that there are no allegations linking them to any of the facts set forth in  
4 the complaint. According to Defendants, they did not participate in the conduct that allegedly  
5 deprived Fernández-Hernández of his life. Toledo also contends that he was brought into this  
6 suit exclusively because he is the Police Department's Superintendent. In opposition, Plaintiffs  
7 argue that Defendants' failure to supervise Ramos-Soto, together with their alleged knowledge  
8 of the "bad blood" between him and Fernández-Hernández, shows a callous and reckless  
9 disregard, and deliberate indifference to the latter's constitutional rights. Id. Upon reviewing  
10 the complaint, this Court notes that Defendants did not directly participate in the events which  
11 led to this suit, therefore, they can only be found liable if Plaintiffs have first shown that their  
12 subordinates' behavior results in a constitutional violation.

13 Taking as true all well-pleaded facts in the complaint, this Court finds that Plaintiffs have  
14 failed to state a claim under Section 1983. That is, the complaint does not describe constitutional  
15 violations attributable to the police officers. This Court first notes that Plaintiffs' complaint,  
16 aside from providing formulaic recitations of the elements of the cause of action, fails to show  
17 the chain of events that led to Fernández-Hernández's death, and Defendants' involvement in  
18 the same. Moreover, even if Plaintiffs amended the complaint to include additional factual  
19 allegations, this Court finds that the first factor needed to state a claim under Section 1983 is  
20 not met, that is, Ramos-Soto was not acting under color of state law. As previously stated,  
21 establishing that the defendant acted "under color of state law" is one of two essential  
22 requirements for an action under Section 1983, because liability can only be imposed for  
23 conduct that is attributable to the state. Zambrana-Marrero v. Suarez-Cruz, 172 F.3d 122, 125  
24 (1<sup>st</sup> Cir. 1999). Such determination requires an assessment of the totality of the circumstances,  
25 including "the nature and circumstances of the officer's conduct and the relationship of that  
26 conduct to the performance of his official duties." Id., n. 5; see also Gueits Colon v. De Jesus,

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3 177 F. Supp. 2d 128, 135 (D.P.R. 2001). When applied to police officers, although factors such  
4 as a police officer's uniform, the officer's duty status, the officer's use of a service revolver, and  
the location of the incident, are to be considered, they "must not be assessed mechanically." Id.  
5 at 125. Moreover, in distinguishing private action from state action, courts must inquire as to  
6 whether the state actor's conduct occurs while performing an actual or apparent duty of his  
7 office, and under the authority of his office. Id. An officer may be acting under color of law if,  
8 "at the time in question, [he] purposes to act in an official capacity or to exercise official  
9 responsibilities pursuant to state law." Id. (citing Martinez v. Colon, 54 F.3d 980, 986 (1<sup>st</sup> Cir.  
10 1995)).

11 In the complaint, Plaintiffs do not include the facts or incidents which allegedly caused  
12 hostilities between said officers, despite allegations that there was a long-standing history of  
13 fights, disputes, and a "hateful" relationship between Fernández-Hernández and Ramos-Soto.  
14 Moreover, Plaintiffs fail to provide the chain of events that led to Fernández-Hernández's death.  
15 However, Plaintiffs do not posit that the bad blood between them was due to issues arising from  
16 work-related matters, nor that Fernández-Hernández's death occurred while Ramos-Soto  
17 exercised his duties as a police officer. As a result, this Court finds that the present suit does  
18 not stem from actions taken by Ramos-Soto in his capacity as a police officer, but instead, that  
19 he shot and killed Fernández-Hernández as a result of the personal tensions between them. The  
20 fact that an officer may have been acting under color of state law at one point in time does not  
21 mean that all action taken immediately thereafter will constitute action done under color of state  
22 law. Therefore, even if the facts took place in the police station, which Plaintiffs do not  
23 explicitly assert, they were not executed as part of Ramos-Soto's duties as a police officer.

24 A review of these, and the remaining averments within the complaint regarding  
25 Defendants, persuades this Court that Plaintiffs have not sufficiently pled a viable Section 1983  
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2 claim. As a result, Plaintiffs' Fourth, Fifth, Seventh, Eighth, and Fourteenth Amendments  
 3 claims also fail.<sup>4</sup> Since Plaintiffs have not pled the necessary elements for a Section 1983 claim,  
 4 Defendants' motion to dismiss for failure to state a claim is **GRANTED**.

5 *Supplemental Law Claims*

6 Defendants request that this Court dismiss the claims brought pursuant to its supplemental  
 7 jurisdiction because dismissal of said claims is proper once all federal claims have been  
 8 disposed of. Considering that Plaintiffs' federal claims are dismissed, their supplemental law  
 9 claims are **DISMISSED without prejudice**.

10 Finally, this Court notes that the other defendants in the case at bar have not moved for  
 11 the dismissal of Plaintiffs' Section 1983 claims. Nonetheless, *sua sponte* dismissal is warranted  
 12 because, as previously noted, regardless of how Plaintiffs phrase or amend their claims, they  
 13 will not be able to satisfy the requisites needed to prevail in a Section 1983 claim. See TMTV  
 14 Corp. v. Pegasus Broad. of San Juan, 490 F. Supp. 2d 228, 236 (D.P.R. 2007) (citing Chute v.  
 15 Walker, 281 F.3d 314, 319 (1st Cir. 2002)) (holding that "[*sua sponte*] dismissal should be used  
 16 sparingly, but is appropriate if it is 'crystal clear that the plaintiff cannot prevail and that

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20                  <sup>4</sup> Notwithstanding, this Court notes that, in their opposition to the Defendants' motion to  
 21 dismiss, Plaintiffs admit that their claims under the Fourth, Fifth, and Sixth Amendments are  
 22 unwarranted. Docket # 20, p. 5. This Court reminds the parties that all representations to the court,  
 23 submitted to the court through pleadings, motions, and any other document, are bound by FED. R. CIV.  
 24 P. 11(b)'s mandate. Therefore, all claims, defenses, and other legal arguments that are unwarranted by  
 25 existing law, are, in fact, frivolous, and can be sanctioned by the courts. In the instant case, both  
 26 Plaintiffs and Defendants have set forth unwarranted legal arguments, insofar as the current case law  
 is extremely clear as to the applicable statutes in cases such as this one. The methodic inclusion of  
 numerous allegations and defenses is unjustified, and unnecessarily onerous for the courts. Therefore,  
 the parties shall take the foregoing into consideration when appearing before this Court, or face the  
 imposition of sanctions.

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3 amending the complaint would be futile'"). As previously held, Ramos-Soto was not acting  
4 under color of state law, and as such, Plaintiffs' Section 1983 against all defendants claims fail.

5 **Conclusion**

6 Based on the foregoing, Defendants' motion to dismiss is **GRANTED**. Plaintiffs' federal  
7 claims against all defendants are **DISMISSED with prejudice**.

8 **IT IS SO ORDERED.**

9 San Juan, Puerto Rico, this 16<sup>th</sup> day of June, 2009.

10 S/*Salvador E. Casellas*  
11 Salvador E. Casellas  
12 U.S. District Judge

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